

STATE-LOCAL GOVERNMENT RELATIONS IN NIGERIA'S FOURTH REPUBLIC: AN ASSESSMENT OF THE (1999 – 2010) EXPERIENCE

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Abstract

The mutual working relationship between and amongst the federal, state and local councils in Nigeria, just like those of advanced democracies is germane to this study. The paper is an empirical theoretical expositions of the chequered relationship that has existed between the three tiers of government in Nigeria since political independence in 1960 to date. The position of this paper is that the place of local councils as enshrined in the 1999 constitution (as amended) is practically honored in the breach than in strict observance. Hence, local councils in Nigeria have been highly politicized by the powers that be, and the true position of the constitution on the status of the councils are greatly in doubt. Of particular importance in this paper is the dynamics of federal, state and local council relations in the erstwhile Obasanjo administration and the kind of contradictions the administration posed in the corporate affairs of state. The paper concludes that greater autonomy, consensus building, adequate constitutional obligations should be granted to local councils to enhance overall best practices as well as grassroots transformation and sustainable development.

Keywords: Federalism, Constitution, State, Local Government, Intergovernmental Relations.

Introduction

Inter-government relations involves the relationship, both vertical and horizontal, that exists between the various organs and departments within the sovereign government of a particular country (Akinsanya, 2005). If we take Nigeria for example, inter-governmental relations would mean the relationships existing between the various levels of government

from the federal, state to the local government level; between the various ministries and parastatals, etc. There are three discernible levels of intergovernmental relations in a unitary structure, but six levels are in a Federation like Nigeria. These levels are:

- i) Federal — State Relations
- ii) Federal — State — Local Relations
- iii) Federal — Local Relations
- iv) State — State (Inter-state) Relations
- v) State — Local Relations
- vi) Local — Local (Inter-Local) Relations.

Any keen observer of the political scene in Nigeria will no doubt agree that federalism and inter-governmental relations (IGRs) in the country has been undergoing a series of radical changes particularly from an autocratic military system of government to a democratic dispensation. Most writers on federalism and inter-governmental relations (IGRs) have often seen the American federal system as a cooperative partnership of federal, state and local governments (Olugbemi, 1980). That an essential feature of federal states is the division of “political power” between the federating (states, cantons, Religions or provinces) and central (Federal) governments, with each tier of government having the final say regarding matters belonging to its sphere, (Wheare, 1959) assigned to it by the constitution, meaning that neither tier can abolish the other. However, inter-governmental refers to different layers of government cutting across each other’s domain of specified authorities, and in which they interact cooperatively and/or conflictually to achieve parochial and collective objectives of divisional and general government (Dare, 1979). Since the coming into force of the 1999 Constitution of the Federal Republic of Nigeria on 29th May, which ushered in the Fourth Republic, much controversy has been generated with respect to inter-governmental relations.

However, how do we examine Nigeria’s inter-governmental relations in the Fourth Republic? As a point of departure, we would examine the theory and practice of federalism while section II examines typical models of IGRs and their applicability or otherwise to Nigeria’s federal structure. Section III analyses the status of LGCs in Nigeria’s IGRs in the Fourth Republic. The conclusion then follows.

Theory and Practice of Federalism

We know as students of political science, that the term federalism has attracted a wide variety of meanings and definitions without losing its essential characteristics or content. Simply put, federalism connotes a method of power sharing in a political system. Thus, K.C. Wheare, a foremost classical writer on this concept and other writers have defined a federal state as one in which the Central (National) and state (federating) governments are coordinate, namely, that neither tier of government (Central-state/Regional) is subordinate to the other in legal authority (Jinadu, 2003).

The principle of federalism according to Wheare involves certain uncompromising qualities.

- i) The division of powers among levels of government;
- ii) Written constitution showing the division; and
- iii) Co-ordinate supremacy of the two levels of government with regards to their respective functions;
- iv) The powers to amend the constitution to be exercised by both levels of government acting in cooperation;
- v) Existence of an independent judiciary or body to adjudicate dispute arising from clash of powers between the federal and state governments;
- vi) Financial independence of both levels of government as “financial subordination makes an end of federalism”.

After stating these qualities, Wheare unequivocally assert:

I have put forward uncompromisingly a criterion of federal government. The delimited and coordinate division of governmental functions and I have implied that to the extent to which any system of government does not conform to this criterion, it has no claim to call itself federal (Wheare, 1959).

As was to be expected, Wheare’s rigid stance attracted many criticisms. His definition was criticized as illegalistic, inflexible unrealistic and unworkable as well as neglecting certain socio-economic, cultural and political factors that actually affect the dynamics of federalism. He was accused of relying excessively on essential features of American federalism and thus fell prey, to a kind of historicism (Dudley, 1963).

As Akinsanya (2005) rightly noted that no single federation the world over has fully embodied the Wheare principles, which essentially, are ideal. To be sure, several factors such

as the party system, the economy, particularly, the world economy during and since the “Depression” of the 1930s have produced fundamental changes in the practices of governments of most federal states including Australia, Canada, India, Switzerland and the

United States. Billy J. Dudley has noted:

... the layer's picture of a federal structure as being a formal division of sovereign powers in which the federating governments are coordinate in rank and independent in function, and exist as equal jurisdictional entities, is very unreal in actual practice.

Indeed, Dudley and Akinsanya have observed that:

The trend in the older federations has been towards increasing federal supremacy and authority over the states, province or cantons, most especially in the areas of finance and economic planning (1968).

As Akinsanya noted, “for the period since independence, and particularly during the period of military rule, Federal – state relations in Nigeria “... have been characterized by increasing federal supremacy and authority over the states” (2005:10).

It should be emphasized that it is the legal framework, the constitution which encapsulated the volition on the federal society and thus created the federal system. In the absence of this constitution, the federal society could degenerate into any other form of societal organization other than a federal one. Thus Amuwo (1999) asserts, “It is constitutionalism or it's absence that gives rise to different types of federal practice and culture”. It therefore becomes the ‘cognitive map’ to understanding the nature and culture of power and policies in federal system. However, it is within the legal framework provided by a federal arrangement particularly its division of governmental powers that federal instrumentalities take meaning and significance. The process further sensitizes us to the changing and evolving nature of the federal balance of power and to the fact that inter-governmental cooperation usually cuts across the formal constitutional division of powers (Akinsanya, 1989; Diamond, 1993; Ayoade, 2005).

Models of Inter-Governmental Relations and Nigeria

Several models of inter-governmental relations have been derived by scholars to guide us in understanding IGRs in any political system beyond constitutional delineation of powers

(Deid, 1978). The best, and perhaps, the most insightful and significant is the three-fold typology formulated by Deil D. Wright, based, as it were, on the authority structure of each tier of government which itself is dependent on the totality of executive and financial capacities of each level of government. Three models of authority relationships among Federal, State and Local Governments in the United States have been discerned by Wright as shown in Table 1 below.

Table 1

| MODELS OF IGRS IN THE UNITED STATES | | | |
|--------------------------------------------|-------------|----------------|-----------|
| | 1 | 2 | 3 |
| DESIGNATION | COORDINATE | OVERLAPPING | INCLUSIVE |
| RELATIONSHIP | INDEPENDENT | INTERDEPENDENT | DEPENDENT |
| AUTHORITY PATTERN | AUTONOMY | BARGAINING | HIERARCHY |

The coordinate Authority model according to Ayoade defines a peripheralised, weak or decentralized federalism, reminiscent of the state-centered variant of the Jeffersonian school of thought. The center is weakened to strengthen the periphery just as in the early days of the American Union (Obianyo, 2005). He further asserts that the coordinate authority model (CAM) conforms with the dualist or binomial theory of federalism, similar to Wheare's uncompromising principles and no doubt the coordinate authority model reaffirms the dual character of federalism as against the Tripod character introduced in the 1979/1999 Constitutions of Nigeria. Thus, implied in the dualist model is the subordinate dependent and agency status of local government (Dudley, 1968). And this was accorded legal expression in the judicial pronouncement of John Forest Dillion, an Iowa judge in the 1960s popularly known as the Dillion Rule, which pronounced in 1968 the legal subservience doctrine of local governments. He declared, without mincing words:

It must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no other. First those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted, third, those absolutely essential to the declared objects and purposes of the corporation not simply convenient, but indispensable, and fourth, any fair doubts as to the existence of a power is resolved by the courts against the corporation (cited in Dudley, 1968).

As clearly observed by Akinsanya that “in terms of Federal-state relationship, the coordinate Authority Model implies that Federal and states’ Governments are independent and autonomous. And this view was formulated in the Tarbel’s case (1871), and reinforced by the United States’ Supreme Court’s decision in *National League of Cities V User* (1976) where the court’s ruled that the United States Congress did not have the authority requiring states or their local governments to observe minimum-wage and minimum-hour laws, adding that the federal legislation violated the “attributes of sovereignty attaching to every state government which may be impaired by congress.” In essence, Akinsanya concludes that, for reasons, which are not unrelated to “a growing industrial society of increasing complex and interdependent unit”, the coordinate Authority Model of IGRs has become inappropriate and undesirable, because the model is addressed to no-existence socio-political conditions.

The over-lapping Authority Model of IGRs occupies the median position guaranteeing interdependence between the three levels of government and necessitating political bargains between them. However, Akinsanya has identified three basic features of this model. First, substantial areas of government operations involve Federal, State and Local units (or officials) simultaneously. Second, the areas of autonomy and full discretion are comparatively small. Third, the power and influence available to any one jurisdiction (or official) is significantly small. Obviously, any analysis and interpretation of the overlapping Authority Model of IGRs have a clear bias in the direction of cooperation and negotiated agreement. This is true of the Nigerian situation, in which the Concurrent List, which should have encouraged cooperation between the center and the units, became an avenue for evacuating powers from the state and boosting that of the center.

The Inclusive Authority Model of IGRs conveys the essential hierarchical nature of authority. States and localities are minions or agents of the Federal Government, which, to all intents and purposes, is supreme. While it is difficult to ascertain the degree or extent to which the Inclusive Authority Model of IGRs is still prevalent in the United States, there is little doubt that there has been much movement away from this model through several court decisions, congressional statutes and administrative regulations (Jinadu, 2003). In an Inclusive Authority Model of IGRs – the extreme variant of the coordinate Authority Model is the one in which the states and Local Governments are mere appendages of the

Central Government. Hence, Akinsayna (2005) remarked that:

Federal-State-Local relations in Nigeria between 1966-1979, 1993-1999 were characterized not only by the increasing dependence of the states and Local Governments on the Federal Government in areas considered an exclusive preserve of states and local Governments such as primary – and post-primary education.

He further asserts that in the overlapping Authority model of IGRs, power is dispersed between the three tiers of authority as to permit some measure of autonomy enjoyed by the different tiers of government capable of independent action in each sphere. Federal-state-local relations during the second Republic and the Babangida- Abacha- Abubakar Administrations is a combination of overlapping Authority Model and inclusive Authority Model of IGRs. The 1979 constitution delineated a three-tiered federation structure in which each tier enjoys a considerable measure of independence – jurisdictionally, financially and functionally even if some forces appears to tilt the balance of power in favour of the centre, and rarely in favour of the federating state and Local Governments.

State-Local Government Relations in the Fourth Republic

The 1979 Constitution delineated a three tiered federal structure in which each tier, particularly the Federal and states' Governments, enjoys a considerable measure of independence jurisdictionally, financially, and functionally even if several forces appear to tilt the balance of power in favour of the centre, and rarely in favour of states' Governments and Local Government Councils, and even if constitutional provisions see LGCs as subordinates in every material particular to the states' Governments (Akinsanya, 2005).

As rightly observed by Akinsanya, state Governors not only exercised their powers under Section 7(1) of the 1979 Constitution to dissolve “elected” LGCs and replace them with sole Administrators or caretaker committees but also created new LGAs. Although the constitution enjoined states to pay 10 percent of the statutory revenues to LGCs, very few states honoured the provision. In fact, some states forced some LGCs to make contributions for the provision of some services like primary education. Additionally, statutory allocations from the “Federation Account” to LGCs, paid into states-joint Local Government Account’ were often diverted by some state Governments. By and large, LGCs were emasculated through acts of omission or commission by some state Governments.

It is a fact that the 1999 Constitution of the Federal Republic of Nigeria ushered in a democratically elected regime on May, 29th 1999, and the 1979 Constitution, provides for three tiers of government: Federal, State and Local, and that each level of government is independent in the sense that one level is not subordinate to the other in legal authority. Specifically, it has been argued by Akinsanya that:

Local Government Council are autonomous entities, and therefore, should be treated as such. However, the much touted autonomy of LGCs, if that was the intention or intendment of the “authors” of the “1976 Local Government Reforms”, flies in the face of facts and constitutional provisions (2005:28).

That the ‘authors’ of the 1999 Constitution, like the 1979 Constitution, paid little or scant attention to Local government as the third tier of government is no longer in doubt. Indeed, from all indications, the local government is the least important of all the three tiers of government just like the “Third World is the least important in the comity of nations”. A careful examination of the distribution of powers among the three-tiers of government under the 1999 Constitution and the practice of Inter-Governmental Relations (IGRs) in the on-going democratic dispensation, clearly shows the total subordination of Local Government Council (LGCs) to the other two tiers of government (centre and federating states). The question we now ask is, what then is the Locus of a local government council as the third-tier of government in Nigeria? Section 7(1) of the 1999 Constitution provides unambiguously that:

The system of local government by democratically elected local government council is under this constitution guaranteed.

It adds, and this is very important that:

Accordingly, the Government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.

The contradictions in the provision of the 1999 constitution on local government did not help matters, and set the stage for the later struggle between the federal and state governments over control of the localities. In 2003, at the height of the struggle and

controversy over levels of government, the federal government set-up a technical committee on the Review of the structure of local government councils to review and consider the desirability or otherwise of retaining local government as the third-tier of government. One of the major recommendations of the committee was the reintroduction of the parliamentary system at the local government level in view of what it considered the expensive and wasteful nature of the presidential system at that level. This, and the landmark Supreme Court ruling of 2001 which affirmed state responsibilities for local government, were perhaps the queue state governments were waiting for to perform their own experiments.

Taking their authority from section 7(1) of the 1999 constitution that guarantees democratically elected local councils and empowers state governments to enact laws for the “establishment, structure, composition, finance and functions” of the councils, and if section 128 of the constitution also empowers a State’s House of Assembly “to direct or cause to be directed an inquiry or investigate into – (a) any matter or thing with respect to which it has power to make laws; and (b) the conduct of the affairs of any person, authority ...; charged ... with the duty of or responsibility for (i) executing or administering laws enacted by the House of Assembly, and (ii) disbursing or administering moneys appropriated or to be appropriated by such House”, then the Dillon’s Rule enunciated by the Iowa state chief judge is apt in describing state-Local Relations in Nigeria (Deil, 1978). In the absence of any legislative enactment, and/or constitutional provision to the country, states can determine not only the tenure of elected Local Government officials elected prior to the coming into force of the 1999 constitution. For a number of reasons, the president (Obasanjo) and the National Assembly decided that the 2002 Local Government Elections must be postponed, and this by extending the tenure of office of elected local government officials by one year through the Electoral Act of 2001 by invoking item 11 of the Concurrent Legislative list providing that:

The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government councils.

The word “procedure” was interpreted, and albeit wrongly to include timing of the election and tenure of those elected in order to justify the extension of the tenure of elected local government officials notwithstanding the provisions of sections 312(2) of the 1999 Constitution which states that:

Any person who before the coming into force of this constitution was elected to any elective office mentioned in this constitution in accordance with the provisions of any other law in force immediately before the coming into force of this constitution shall be deemed to have been duly elected to that office under this constitution (Jinadu, 2005:30).

As Akinsanya rightly noted that all efforts made to convince members of the relevant committees of the National Assembly, that they don't have such powers, and would be ultravires fell on deaf ears. When the Supreme Court ultimately invalidated the provisions and ruled that the National Electoral Commission, a federal executive body, which had been conducting bye-elections to fill vacancies in some states' Assemblies refused, failed or neglected to make available to the states' Independent National Electoral Commissions the voters Register to conduct Local government elections due in March 2002, and at the end of the day, President Obasanjo and states' Governors agreed to an unconstitutional procedure of appointing for two years caretaker, interim or transition Local Government Councils contrary to the provisions of Section 7 (1) of the constitution guaranteeing "the system of Local government by democratically elected local government council."

It is obvious that that 1999 Constitution is more elaborate than the 1979 Constitution in its provisions on Local government with specific reference to number of local governments in Nigeria and the method of creating new ones. Obviously an off-shoot of Babangida's 1989, constitution which significantly curtailed state rights in Local government matters, the 1999 Constitution made it very difficult for states to exercise absolute jurisdiction changing the boundaries of local government, by not only stipulating the number of local government (774) in existence in Nigeria and mentioning them in part I of the First Schedule but also gave the National Assembly the power of assent in the events of creation of more local governments by any state. As Obianyo (2005) rightly observed that:

It would appear that the military regimes after creating many local governments put a seal to more creation by any state by including the names of local government in the constitution to make more creation difficult as it being experienced in Nigeria today.

Obviously, only states can create new Local Government Areas pursuant to section 8 (3) of the constitution, and as if the constitution does not envisage, contemplate, nor anticipate the creation of new states and LGAs pursuant to Section 8 (1) and Section (3) of the constitution. Specifically, Section 7 (1) of the constitution empowers a state Government to enact a law providing for the

Establishment, structure, composition, financial and functions of such councils.

It should however be stated that the case of the impasse between the Lagos state governments and the federal government in 2004 which was widely celebrated one. The different interpretation that was given by the two parties to Section 8 (5) and 8(6) as to whether Lagos state has satisfied or fulfilled the provisions of the constitution in relation to the afore-stated sections led to a constitutional crisis. The crisis is significant in view of former President Obasanjo's refusal to release the federal allocation to local governments in Lagos state on the grounds of violation of the 1999 constitution of the Federal Republic of Nigeria. On the directives of President Olusegun Obasanjo to the Minister of Finance in April 2004, to states that created additional LGAs;

No allocation from the federation account should henceforth be released to the Local government councils of above mentioned states (and any other that may fall into that category until they revert back to their local government areas specified in part one of the first schedule of the constitution (Obasanjo 2005).

The affected states were Lagos, Ebonyi Katsina, Niger and Nasarawa. The affected sections of the 1999 Constitution with reference to federal revenue to Local government and state are as stated in section 162(3) viz:

An amount standing to the credit of the Federal Account shall be distributed among the Federal and state governments and local government councils in each state on such term and in such a manner as may be prescribed by the National Assembly.
Sec 162(5)

The amount standing to the credit of local government councils in the federation account shall also be allocated to the states for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.

Sec 162(6)

Each states shall maintain a special account to called “state joint Local government account” into which shall be paid all allocations to the Local government councils of the state from the federation account and from the government of the state.

Sec 162(7)

Each state shall pay to Local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

Sec 162(8)

The amount standing to the credit of Local government councils of a state shall be distributed among the local government councils of that state in such terms and in such manner as may be prescribed by the House of Assembly of the state.

The Lagos state took the federal government to court on this matter, and prayed the court to determine whether or not there is power vested in the president of the Federal Republic of Nigeria (by executive administrative action) to “suspend or withhold for any period whatever the statutory allocation due and payable to the Lagos state government, pursuant to the provision of Section 162(5) of the constitution of the Federal Republic of Nigeria.

On December 10, 2004, in a lead judgement by the chief Justice of Nigeria Muhammadu Lawal Uwais, the Supreme Court, in *Attorney-General of Lagos State V Attorney-General of the Federation*, ruled:

- (a) The federal government has no power, either by executive or administrative action, to suspend or withhold for any period what so ever, the statutory allocations due and payable to Lagos state government pursuant of the provision of Section 162 (8) of the 1999 constitution.
- (b) Such withholding of due allocations is unlawful and contrary to the provisions of the 1999 Constitution. The chief Justice Uwais maintained further that the creation of new Local government areas or councils is supported by the provision of the constitution.

Justice Samson Uwaifo’s comment was more explicit, and caustic: “It does not appear to me that there is any power contained by the president to withhold any allocation on the basis of a conceived breach of the constitution.”

Justice Niki Tobi on his part asked a rhetorical question: “does the president have right to stop the release of funds to the councils?” I think not”. He notes that, “section 162(9) of the Constitution or any other section for that matter does not provide for the stoppage of allocation from the federation account to the local government councils of Lagos or any other state”. Justice Idris Lagbo Kutigi also asserts “Nowhere in the constitution is the president expressly or impliedly authorized to suspend or withhold the statutory allocations payable to Lagos state pursuant to section 162(5) of the constitution, on the ground of complaints made against Lagos state by the Federal government in this section or any ground at all. If the president has any grievance against any tier of government, he shall go to court. He cannot kill them by withholding their allocation.

In essence, the Lagos State Government was right in creating new LGAs, while president Obasanjo has no power to suspend/withhold statutory grants due to Lagos State Government for benefit of its Local Government Council. True, is it that the Supreme Court ruled that the statutory grants withheld are meant for the benefit of 20 LGAs but not 57 LGAs since they cannot come into operation until the National Assembly passes an Act amending Section 3(6) of the constitution and part 1 of the first schedule to the constitution? The Federal Government refused, failed or neglected to release these grants to the Lagos State Government on the spurious grounds that the LASG is likely to use the grants for the benefit of 57 LGAs, and not 20 LGAs recognized by the constitution, thus, raising serious questions whether the president is above the law and/or whether the president is not in serious violation or breach of the provisions of the constitution.

It seems the president has an ass to grind with Lagos state, as it did not withhold the statutory allocation of other states like Yobe state which did exactly what Lagos did. Yobe created additional 23 Local governments in addition to its earlier 17 bringing the total to 40 Local governments but was never penalized by the Federation government. The other states e.g, Ebonyi, Katsina, Nasarawa and Niger turned their respective new Local government areas (LGAs) into what they called ‘Development Areas (Obianyo, 2005).

Conclusion

There is no doubt that local government councils are in the best position to play a major role in the grassroots development of our society. As the nearest government to the people, much is expected of it hence the need for an effective and result-oriented administration. In Nigeria, for example, inter-governmental pressure would mean the

relationship existing between the various levels of government from the federal, state to the Local government level. In other words, the assessment here is about the whole essence of government, its various organs and departments with a view of ascertaining the use of force or exert of influence or lobby and the level of systematic functional harmony or otherwise.

We have carefully examined the Locus of local government councils in Nigeria's Inter-governmental relations in the Fourth Republic under the 1999 Constitution, using as our framework of analysis, Deil Wright's models of IGRs, in the United States. Our study vividly shows that although Section 7(1) of the Constitution states that the "system of local government by democratically elected local government council is guaranteed", it empowers a state's House of Assembly to make laws to ensure their existence, structure, finances and functions, thus "detracting from the desired constitutionally guaranteed autonomy." It is in the area of finance that the subordination of LGCs to the centre and federating states is more encompassing. While the law is very clear as to which tier has the power to create new LGAs, it is equally clear that the president (executive rascality) has no powers to seize statutory grants from the Federal Account simply because the newly – created LGAs are yet to become operative pursuant to section 8(5) of the constitution.

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